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FILED
U.S. DIST. COURT
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA May
SAVANNAH DIVISION

May 23 11:59 AM '00

CLERK B.L.

MELANIE WELSH; JOCELYN
ROBINSON; SARAH L. OWENS;
MARGARET DAUBNEY; VALERIE
MAY; JOSEPH A. CARRINGTON;
WHITNEY SPORNBERGER; EDITH
GREGORY; CLAYTON FREELAND;
MEGAN POPE; AMANDA CONROY;
MARGARET GIDDINGS; ADINA
ROTHBARD; KIMBERLY MONTEAN;
and all others similarly situated

Plaintiffs : [Redacted]

BOARD OF REGENTS OF THE
UNIVERSITY SYSTEM OF GEORGIA;
d/b/a/ UNIVERSITY OF GEORGIA;
STEPHEN R. PORTCH,
Chairman of the Board of Regents,
in his individual and official capacities
and MICHAEL F. ADAMS, President
of the University of Georgia,
in his Individual and Official Capacities;

Defendants

CIVIL ACTION
FILE NO. **CV400-134**

COMPLAINT

COME NOW PLAINTIFFS MELANIE WELSH; JOCELYN ROBINSON; SARAH OWENS; MARGARET DAUBNEY; VALERIE MAY; JOSEPH A. CARRINGTON; WHITNEY SPORNBERGER; EDITH GREGORY; CLAYTON FREELAND; MEGAN POPE; AMANDA CONROY; MARGARET GIDDINGS; ADINA ROTHBARD; and KIMBERLY MONTEAN, and file this complaint against above-named Defendants on the following grounds:

NATURE AND PURPOSE

1.

This is an action challenging racial and gender preferences in the admissions policy at the University of Georgia (“UGA”) and the use of race-based scholarships which are available to minority students only. Said policy has been in effect, with minor changes since 1996 and continues today. This challenge to the admissions policy in effect from 1996 through the present day (“the relevant time period”) and the use of race-based scholarships is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. §1983, Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq., and Title IX of the Education Amendments, 20 U.S.C. §1681 et seq., with respect to the on-going actions and policies of the Defendants which discriminate against citizens of the Caucasian (white) race and female gender.

JURISDICTION AND VENUE

2.

This action arises under the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. §§ 1983, 1988 and 2000d, et seq. and under the Education Amendments of 1972, 20 U.S.C. §1681 et seq.

3.

This court has original jurisdiction of this action pursuant to 28 U.S.C. §1331, 1343(3) and 1343(4).

4.

Venue properly lies in this Court under 28 U.S.C. §1391(b)(1) and (2) and by virtue of the Order of this Court of February 9, 2000 in Johnson v. Board of Regents, Civil Action No. 499-169, a related action. See Local Rule 3.1.

PARTIES

5.

Melanie Welsh is a white, female citizen of the State of Georgia. Ms. Welsh is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Welsh applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

6.

Jocelyn L. Robinson is a white, female citizen of the State of Georgia. Ms. Robinson is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Robinson applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

7.

Sarah Owens is a white, female citizen of the State of Georgia. Ms. Owens is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Owens applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

8.

Margaret Daubney is a white, female citizen of the State of Georgia. Ms. Daubney is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Daubney applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

9.

Valerie May is a white, female citizen of the State of Georgia. Ms. May is over 18 years of

age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. May applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

10.

Joseph Carrington is a white, male citizen of the State of Georgia. Mr. Carrington is over 18 years of age and a high school graduate. He is entitled to bring actions of this kind and nature. Mr. Carrington applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

11.

Whitney Spornberger is a white, female citizen of the State of Georgia. Ms. Spornberger is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Spornberger applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

12.

Edith Gregory is a white, female citizen of the State of Georgia. Ms. Gregory is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Gregory applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

13.

Clayton Freeland is a white, female citizen of the State of Georgia. Ms. Freeland is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Freeland applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1999-2000 school year.

14.

Megan Pope is a white female citizen of the state of Georgia. Ms. Pope is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Pope applied for admission to UGA, seeking admission to the Freshman class entering UGA during the fall semester of the 1999-2000 school year.

15.

Amanda Conroy is a white, female citizen of the State of Georgia. Ms. Conroy is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Conroy applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1998-1999 school year.

16.

Margaret Giddings is a white, female citizen of the State of Georgia. Ms. Giddings is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Giddings applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1998-1999 school year.

17.

Adina Rothbard is a white, female citizen of the State of Georgia. Ms. Rothbard is over 18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Rothbard applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1997-1998 school year.

18.

Kimberly Montean is a white, female citizen of the State of Georgia. Ms. Montean is over

18 years of age and a high school graduate. She is entitled to bring actions of this kind and nature. Ms. Montean applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 1996-1997 school year.

19.

Defendant Board of Regents for the University System of Georgia (Regents) is an agency of the State of Georgia and is subject to suit in actions of this kind and nature. The Board is the legal entity operating the public institutions of higher learning in the State of Georgia, including UGA. The Board can be served with process through its Chancellor, Defendant Stephen Portch, at his business address of 244 Washington Street, SW, Atlanta, Georgia 30334.

20.

Defendant Stephen Portch is the Chairman of the Regents, and the senior official within the State university system. He may be served with process at his business address of 244 Washington Street, SW, Atlanta, Georgia 30334.

21.

Defendant Michael F. Adams is President of UGA and, as such is the final policymaking authority for UGA on admissions and all related processes. Dr. Adams may be served with process at his business address of Lustrat House, University of Georgia, Athens, Georgia 30602-1661.

CLASS ACTION ALLEGATIONS

22.

The named Plaintiffs bring this action on behalf of themselves and all other past, present and future similarly situated applicants for admission as students, who were disparately considered for admission to UGA or any other university system institution because of their race and/or gender. This action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil

Procedure.

23.

The class of persons sought to be represented by the named Plaintiffs consists of all present and future similarly situated applications for freshman admission to UGA or other discriminating institution within the university system who have been discriminated against based on their race and/or gender, and all such past applicants for admission so discriminated against within the applicable statute of limitations.

24.

Upon information and belief, there are currently several hundred members of the putative class, with the potential for even greater numerosity in the future as other individuals who seek enrollment are discriminated against by the Defendants. The numerosity of the proposed class makes their joinder impractical. Moreover, since Plaintiffs seek to include in the class these future unknown applicants, joinder of all members of the putative class would be impracticable.

25.

There are common questions of law and fact among members of the class, including but not limited to the operation of the TSI-based admission system, and the legal issue of whether Defendants can constitutionally maintain a system of race and gender preferences in admission to a public institution.

26.

The questions of law and fact common to the members of the class predominate over any questions which affect only individual members, making a class action the superior method for the fair and efficient adjudication of this controversy.

27.

The claims of the named Plaintiffs are representative of the class as a whole as they has been the subject of the racial and gender discrimination of which she has complained, and suffered legally redressable harm as a direct consequence of the challenged policies and practices of the Defendants. Plaintiffs will fairly and adequately protect the interests of the class.

28.

Defendants have acted or refused to act on grounds generally applicable to all class members, in the development, maintenance and operation of the admissions policy challenged in this action, thereby making final injunctive relief appropriate.

29.

Plaintiffs have retained counsel with experience in prosecuting and maintaining class actions.

FACTUAL ALLEGATIONS

30.

Since 1996, UGA has employed a two-tiered admissions policy which employs racial and gender preferences in an effort to achieve its concept of diversity on campus. This concept of diversity entails a representation of males and non-Caucasian groups in proportion with their representation in the community at large.

31.

The UGA admissions policy for the Fall 1996 freshman class utilized a two-stage "First Notice" and "Final Notice" admission process. The "First Notice" admission stage ranked students on the basis of objective academic criteria. Seventy-five percent (75%) of the 1996 Fall freshman class (about 2,400 enrolling students) were selected in the "First Notice" admissions process by meeting a specified minimum SAT score (Total score of 970, Verbal score of 430, Math score of

400) and a minimum Academic Index of 2.75.

32.

For those remaining applications for the 1996 freshman class, those students whose AIs were above a specified minimum (2.30) and had achieved certain minimum SAT scores (Total score of 830, Verbal score of 430, Math score of 400), UGA considered other factors to generate a Total Student Index ("TSI").

33.

The 1996 TSI was composed of 15 factors. The total number of TSI points that could be awarded in 1996 was 10.46. Academic factors (academic index, above average SAT score, high GPA, and honors or advanced placement courses) comprised a possible 6.36 points. Demographic factors (Georgia residency, residency in South Georgia or non-metropolitan areas, gender (meaning male), and ethnic diversity (meaning African-American, Hispanic, American Indian, or Multi-racial)) comprised a possible 2.60 points. Finally, extracurricular or other factors (school and community activities, summer and school year work activities, parent or sibling UGA affiliation, negative recommendations, and first generation college) comprised a possible 1.50 points.

34.

For 1996 admissions, black ethnicity was worth 1.75 points of the TSI, and was the most heavily weighted factor among the demographic components in the TSI. The TSI weight for male gender was .25.

35.

For 1996 "Final Notice" admissions, students obtaining a TSI score of 4.30 or higher were offered automatic admission. Those students who achieved a TSI score of less than 4.00 were rejected. Students whose TSI scores were between 4.00 and 4.29 had their individual files reviewed

in a process called "edge-reading."

36.

"Edge Reading" is a process used to evaluate students who have already been reviewed through both the Academic Index and Total Student Index processes and have been neither screened in or out of consideration.

37.

As a part of the "edge reading" process, the applicant's file is individually "edge read" and evaluated by at least two counselors of the UGA Admissions Office. A certain number of offers are then made to the highest ranked "edge read" applicants.

38.

The process for admission for the 1997 Fall freshman class [1997 process] at UGA was similar to the 1996 process. There were some changes in the number of factors and the factor weights for the TSI.

39.

"First Notice" admission during the 1997 process resulted in the admission of about 75% of the freshman class (about 3100 enrolling students). Those students achieving specified minimum SAT scores (Total score of 1000, Verbal score of 430, Math score of 400) and an AI of at least 2.65 were offered admission to the 1997 class.

40.

The "Final Notice" stage for 1997 admissions was divided into two phases. The first phase automatically admitted students based on academics alone, so that those achieving a specified minimum SAT score (Total score of 1000, Verbal score of 430, Math score of 400) and whose AI was above 2.50 were offered admission. Those students with less than a 2.25 AI were automatically

rejected.

41.

The second phase of the "Final Notice" segment of the 1997 process itself involved two steps. Students with an AI between 2.25-2.50 were scored using the 12 TSI factors (see *infra* ¶47). These TSI factors and weights remained unchanged for the 1998 and 1999 freshman admission process.

42.

The total number of possible points that could be awarded based on the 1997-1999 TSI factors was 8.46. Academic factors (academic index, high SAT scores, high GPA, and honors or advanced placement courses) comprised a possible 5.71 points. Demographic factors (Georgia residency, gender, and ethnicity) comprised a possible 1.25 points. Finally, leadership or other activity factors (extracurricular activities, summer and school year work activities, parent or sibling UGA affiliation, and first generation college) comprised a possible 1.50 points.

43.

For 1997 admissions, race (non-Caucasian) was worth .50 total TSI points. The TSI weight for gender was .25.

44.

Applicants for 1997 admission with a TSI score of 4.40 or higher were offered automatic admission. Applicants whose TSI score was between 3.79 and 4.39 had their files "edge read."

45.

The 1998 admission process at UGA was very similar to the 1997 process. The "First Notice" stage resulted in admission of about 85% of the freshman class (projected as about 3600 enrolling students) based on academic factors. Those students achieving a specified minimum SAT

score (Total score of 1000, Verbal score of 430, Math score of 400) and an AI of at least 2.65 were offered admission.

46.

For the 1998 process students with at least a 2.30 Academic Index and a specified minimum SAT (Total score of 950, Verbal score of 430, and Math score of 400) were eligible for consideration under the TSI factors, which were the same as in 1997. Students with a TSI of at least 4.69 were offered automatic admission. Students whose TSI score was between 3.79 and 4.39 had their files "edge read" by at least two professional counselors in the Admissions Office.

47.

The 1999 admissions process had few changes from the 1998 process. The "First Notice" again admitted about 85% of the freshman class (projected as about 3500 of 4100 total enrolling students) based on academic factors. The specified minimum SAT score for automatic admission was not increased for the total score (1000) but was increased for both the Verbal (from 430 to 450) and Math (from 400 to 450) scores. A minimum Academic Index of 2.86 was required for automatic admission, unless the high school curriculum taken was evaluated as "most difficult," in which case a minimum AI of 2.81 was required for automatic admission.

48.

The "Final Notice" for 1999 admissions considered students with an Academic Index of at least 2.40 and a total SAT score of 950 (430 verbal and 400 Math). The 1999 process used the same TSI factors and weights as in 1997 and 1998. Those students with a TSI score of at least 4.93 were offered automatic admission. Students whose TSI score was between 4.66 and 4.92 had their files "edge read" by at least two professional counselors in the Admissions Office.

49.

Plaintiff MELANIE M. WELSH graduated Tucker High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Welsh possessed an academic GPA, as calculated by UGA, of 3.39 and an SAT score of 1110. UGA assigned Ms. Welsh an AI score of 2.83 and a TSI score of 4.33. Ms. Welsh received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Welsh would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Welsh to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

50.

Plaintiff JOCELYN LEE ROBINSON graduated Centennial High School student. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Robinson possessed an academic GPA, as calculated by UGA, of 3.31 and an SAT score of 1140. UGA assigned Ms. Robinson an AI score of 2.83 and a TSI score of 4.18. Ms. Robinson received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Robinson would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Robinson to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

51.

Plaintiff SARAH LYALL OWENS graduated Fayette County High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Owens

possessed an academic GPA, as calculated by UGA, of 3.11 and an SAT score of 1170. UGA assigned Ms. Owens an AI score of 2.69 and a TSI score of 4.14. Ms. Owens received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Owens would have had her application considered in the Edge Read phase of the admissions process. However, the absence of these enhancement points resulted in Ms. Owens' automatic rejection at the TSI phase due to her race and gender and a denial of a fair opportunity to compete for admission with other applicants who had their TSI score enhanced through impermissible consideration of race and gender.

52.

Plaintiff MARGARET ELIZABETH DAUBNEY graduated Chattahoochee High School in 1999. She applied for admission to UGA for the freshman class entering in the Fall of 1999. Ms. Daubney possessed an academic GPA, as calculated by UGA, of 3.07 and an SAT score of 1020. UGA assigned Ms. Daubney an AI score of 2.51 and a TSI score of 4.11 and automatically denied her admission. Ms. Daubney received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Daubney would have had .75 points added to her TSI score causing her application considered in the Edge Read phase of the admissions process. However, the failure to afford her these enhancement points resulted in Ms. Daubney's automatic rejection at the TSI phase due to her race and gender and a denial of a fair opportunity to compete for admission with other applicants who had their TSI score enhanced through impermissible consideration of race and gender.

53.

Plaintiff VALERIE ELIZABETH MAY graduated Tucker High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. May possessed an

academic GPA, as calculated by UGA, of 3.23 and an SAT score of 1140. UGA assigned Ms. May an AI score of 2.74 and a TSI score of 4.09. Ms. May received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. May would have had her application considered in the Edge Read phase of the admissions process. However, the absence of these enhancement points resulted in Ms. May's automatic rejection at the TSI phase due to her race and gender and a denial of a fair opportunity to compete for admission with other applicants who had their TSI score enhanced through impermissible consideration of race and gender.

54.

Plaintiff JOSEPH ALLEN CARRINGTON graduated Roswell High School. He applied for admission to the UGA freshman class to enroll in the Fall of 1999. Carrington possessed an academic GPA, as calculated by UGA, of 2.97 and an SAT score of 1180. UGA assigned Carrington an Academic Index ("AI") score of 2.61 and a Total Student Index ("TSI") score of 4.78. Carrington was denied any numerical enhancement of his TSI score based on his race although non-Caucasian students received an enhancement of .50 points. Had Carrington received this .50 modifier he would have been automatically accepted at the TSI phase of the admissions process without having his application subjected to the Edge Read phase of the process. This caused Carrington to be denied admission due to his race. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

55.

Plaintiff WHITNEY KATE SPORNBERGER graduated Sprayberry High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Spornberger possessed an academic GPA, as calculated by UGA, of 3.23 and an SAT score of 1150. UGA assigned Ms. Spornberger an AI score of 2.78 and a TSI score of 4.88. Ms. Spornberger

received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Spornberger would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Spornberger to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

56.

Plaintiff EDITH MENTZ GREGORY graduated North Springs High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Gregory possessed an academic GPA, as calculated by UGA, of 3.16 and an SAT score of 1130. UGA assigned Ms. Gregory an AI score of 2.70 and a TSI score of 4.45. Ms. Gregory received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Gregory would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Gregory to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

57.

Plaintiff CLAYTON LYNN FREELAND graduated Collins Hill High School student in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1999. Ms. Freeland possessed an academic GPA, as calculated by UGA, of 3.13 and an SAT score of 1130. UGA assigned Ms. Freeland an AI score of 2.69 and a TSI score of 4.59. Ms. Freeland received no TSI score enhancement for gender or race. Had her TSI score been enhanced by .75 points, Ms. Freeland would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Freeland

to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

58.

Plaintiff MEGAN ALLEN POPE graduated St. Pius X Catholic High School in 1998. She applied for admission to UGA for the freshman class to enroll in the Fall of 1998. Ms. Pope possessed an academic GPA, as calculated by UGA, of 2.43 and an SAT score of 1260. UGA assigned Ms. Pope an AI score of 2.27 and a TSI score of 4.77 and automatically denied her admission. Ms. Pope received no TSI score enhancement for gender or race. Even without receiving a score enhancement for race and gender, Ms. Pope possessed a TSI score, which under Defendants' own policy, entitled her to automatic admission. The denial of Ms. Pope, a white female, through a failure of Defendants to adhere to their own admissions policy can only be attributed to Defendants' racial and gender preferences. Such conduct violates Ms. Pope's equal protection rights.

59.

Plaintiff AMANDA ALLYN CONROY graduated from St. Pius X Catholic High School. She applied for admission to the UGA freshman class to enroll in the Fall of 1998. Conroy possessed an academic GPA, as calculated by UGA, of 2.94 and an SAT score of 1190. UGA assigned Conroy an Academic Index ("AI") score of 2.55 and a Total Student Index ("TSI") score of 4.05. Conroy was denied any numerical enhancement of his TSI score based on her race or gender although non-Caucasian students received an enhancement of .50 points and male students received an enhancement of .25 points. Had Conroy received this .75 modifier she would have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Conroy to be denied admission due to her race. Such denial directly conflicts with established jurisprudence and statutory and

constitutional law.

60.

Plaintiff MARGARET H. GIDDINGS graduated Valwood Secondary School in 1998. She applied for admission to UGA for the freshman class entering in the Fall of 1998. Ms. Giddings possessed an academic GPA, as calculated by UGA, of 2.44 and an SAT score of 1230. UGA assigned Ms. Giddings an AI score of 2.25 and a TSI score of 5.05 and automatically denied her admission. Ms. Giddings received no TSI score enhancement for gender or race. Even without receiving a score enhancement for race and gender, Ms. Giddings possessed a TSI score, which under Defendants' own policy, entitled her to automatic admission. The denial of Ms. Giddings, a white female, through a failure of Defendants to adhere to their own admissions policy can only be attributed to Defendants' racial and gender preferences. Such conduct violates Ms. Giddings' equal protection rights.

61.

Plaintiff ADINA L. ROTHBARD graduated Pope High School in 1997. She applied for admission to UGA for the freshman class to enroll in the Fall of 1997. Ms. Rothbard possessed an academic GPA, as calculated by UGA, of 2.99 and an SAT score of 1120. UGA assigned Ms. Rothbard an AI score of 2.46 and a TSI score of 3.56. Ms. Rothbard received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Rothbard would have had her application considered in the Edge Read phase of the admissions process. However, the absence of these enhancement points resulted in Ms. Rothbard's automatic rejection at the TSI phase due to her race and gender and a denial of a fair opportunity to compete for admission with other applicants who had their TSI score enhanced through impermissible consideration of race and gender.

62.

Plaintiff KIMBERLY JOYCE MONTEAN graduated Lassiter High School in 1999. She applied for admission to UGA for the freshman class to enroll in the Fall of 1996. Ms. Montean possessed an academic GPA, as calculated by UGA, of 3.40 and an SAT score of 1050. UGA assigned Ms. Montean an AI score of 2.62 and a TSI score of 3.47. Ms. Montean received no TSI score enhancement for gender or race. Had she received such an enhanced TSI score, Ms. Montean could have been automatically accepted at the TSI phase of the admissions process without having her application subjected to the Edge Read phase of the process. This caused Ms. Montean to be denied admission due to her race and gender. Such denial directly conflicts with established jurisprudence and statutory and constitutional law.

63.

One or more non-Caucasian and/or male students were admitted to a UGA freshman class during the relevant time period who had a grade point average and/or SAT score below those of Plaintiffs.

64.

One or more non-Caucasian and/or male applicants who were considered for admission to the UGA freshman class during the relevant time period had a grade point average and/or SAT score below those Plaintiffs.

65.

One or more non-Caucasian and/or male students were considered for admission to UGA during the relevant time period based on TSI points received for their race and/or gender.

66.

The race and/or gender of one or more of the non-Caucasian and/or male applicants falling

into one or more of the foregoing categories referenced in the preceding paragraphs 57 through 59 of this Complaint was a factor in the decision to admit and/or to consider the admission of such applicant to UGA during the relevant time period, and denied Plaintiffs their legal and constitutional right to an equal opportunity for admission to UGA, a publicly funded, state supported institution of higher learning.

67.

Plaintiffs were not admitted to UGA as an undergraduate freshman during the relevant time period in whole or in part because of their race (white) and/or gender (female).

68.

Plaintiffs were not considered for admission to UGA as an undergraduate during the relevant time period in whole or in part because of their race (white) and/or her gender (female).

69.

As a result of Defendants' unlawful use of race and gender as admission criteria in denying Plaintiffs admission and/or equal consideration of admission to UGA, they are entitled to injunctive relief because they have no adequate remedy at law.

70.

As a result of Defendants' unlawful use of race and gender as factors in denying Plaintiffs' admission and/or equal consideration of admission to the University of Georgia, they have also suffered pecuniary injury by incurring additional costs in enrolling in a private university and emotional injury, entitling her to an additional award of compensatory damages.

71.

Defendants' unlawful use of race also extends to the use of scholarships which are targeted exclusively to minority students at the expense of similarly or more qualified Caucasian students.

72.

Such scholarships include, upon information and belief, the so-called Vice-Presidential Scholarship which awards ten \$1200.00 scholarships each year and the so-called Outstanding High School Student Award which bestows a \$500.00 award to certain incoming minority students.

COUNT ONE:
RACE DISCRIMINATION UNDER TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

73.

The preceding paragraphs 1 - 72 of this Complaint are herein realleged and incorporated by this reference.

74.

The institutions of higher education in the State of Georgia are programs or activities which receive Federal financial assistance, as defined in 42 U.S.C. §2000d, et seq. and its implementing regulations at 34 C.F.R. Part 100.

75.

Defendants have, on the basis of race, subjected Plaintiffs to discrimination in the higher education institutions of the State of Georgia. Defendants' discrimination on the basis of race had the purpose and the effect of preferring persons of non-Caucasian races without meeting appropriate constitutional standards. As noted by the Court in Tracy v. Board of Regents, Civil Action No. Cv497-45 (S.D.Ga. Order of July 6, 1999), UGA "cannot constitutionally justify the affirmative use of race in its admission decisions." Id. at 12.

76.

Defendants' discrimination on the basis of race against Plaintiffs have denied the

beneficiaries of the federal financial assistance received by the higher education institutions of the State of Georgia the right to equal educational opportunities and has denied Plaintiffs the right to be treated in a non-discriminatory manner.

77.

Defendants' discrimination on the basis of race was violative of 42 U.S.C. §2000d, et seq. and its implementing regulation at 34 C.F.R. Part 100, thus entitling Plaintiffs to all appropriate relief provided under the statute.

COUNT TWO:
RACE DISCRIMINATION IN VIOLATION OF REGULATION
CODIFIED AT 34 C.F.R. § 100.3 PURSUANT TO § 602 OF TITLE VI

78.

The preceding paragraphs 1-77 are realleged and incorporated herein by this reference.

79.

The regulations codified pursuant to section 602 of Title VI and found at 34 C.F.R. § 100.3 provide in relevant part:

- (b) Specific discriminatory actions prohibited.
 - (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:
 - (i) Deny an individual any service, . . . or other benefit provided under the program;
 -
 - (v) Treat an individual differently from others in determining whether he [or she] satisfies any admission, enrollment, . . . or other requirement or condition which individuals must meet in order to be provided any service, . . . or other benefit provided under the program;
 - (vi) Deny an individual an opportunity to participate in the program

through the provision of services or otherwise or afford him [or her] an opportunity to do so which is different from that afforded others in the program . . .

....

(2) A recipient, in determining the types of services . . . or other benefits, or . . . the class of individuals to whom, or the situations in which, such services, . . . other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may nor, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race. . . .

80.

Through the use of their unconstitutional admissions policy and award of scholarships, Defendants have denied Plaintiffs a service or benefit (i.e. admission to a public university and/or financial aid) provided through a program which receives federal assistance through the Department of Education. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(i).

81.

Through the use of their unconstitutional admissions policy and award of scholarships, Defendants have treated Plaintiffs differently from other in determining whether they satisfied any admission requirements which must be met before obtaining any benefit provided through a program which receives federal assistance through the Department of Education. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(v).

82.

Through the use of their unconstitutional admissions policy and award of scholarships, Defendants have denied Plaintiffs the opportunity to participate in a program which receives federal assistance through the Department of Education by affording them an opportunity to do so which

is different from that afforded non-Caucasian males. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(vi).

83.

Through the use of their unconstitutional admissions policy and award of scholarship, Defendants have utilized criteria or methods of administration which has the effect of subjecting Plaintiffs to discrimination because of their race. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(2).

84.

Accordingly, Defendants' discrimination against Plaintiffs violates the regulations set forth in 34 C.F.R. § 100.3 and creates liability under 42 U.S.C. § 1883 and 1988.

COUNT THREE:
GENDER DISCRIMINATION UNDER TITLE IX OF THE
EDUCATION AMENDMENTS OF 1972

85.

The preceding paragraphs 1 - 84 of this Complaint are realleged and incorporated herein by this reference.

86.

The institutions of higher education in the State of Georgia are programs or activities which receive federal financial assistance as defined by Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1686 et seq. and its implementing regulations at 34 C.F.R. part 106.

87.

Defendants have, on the basis of gender subjected Plaintiffs to discrimination in the higher education institutions of the State of Georgia. Defendants' discrimination on the basis of gender had

the purpose and effect of preferring persons of the male gender without meeting appropriate constitutional standards.

88.

Defendants' gender discrimination has denied the beneficiary of federal financial assistance received by the higher education institutions of the State of Georgia, the right to equal educational opportunities and has denied Plaintiffs the right to be treated in a non-discriminatory manner.

89.

Defendants' discrimination on the basis of gender violated Title IX, 20 U.S.C. §1681 and its regulations, 34 C.F.R., in particular subpart C, 34 C.F.R. §106.21, entitling Plaintiffs to all appropriate relief under the statute.

COUNT FOUR:
RACE AND GENDER DISCRIMINATION
IN VIOLATION OF THE FOURTEENTH AMENDMENT

90.

The preceding paragraphs 1 - 89 are realleged and incorporated herein by this reference.

91.

The Fourteenth Amendment to the United States Constitution, Section 1 provides, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

92.

Under the Fourteenth Amendment, a State may not categorize citizens on the basis of race unless the use of race is required by a compelling state interest upon a strong basis in evidence. Furthermore, the Equal Protection Clause of the Fourteenth Amendment requires that state action

that distinguishes among citizens because of their race be narrowly tailored to further such compelling state interest. Defendants have not used race to further a compelling state interest, inasmuch as “diversity” is not a compelling state interest. Moreover, Defendant’s use of race is not narrowly tailored to any compelling interest.

93.

Under the Fourteenth Amendment, it is unlawful for a State to assign benefits or burdens on the basis of gender unless they serve important governmental objectives and the gender classification is substantially related to achievement of those objectives. The State must show an exceedingly persuasive justification for gender-based classifications. Defendants have not used gender to further any important governmental objective. The TSI points are not substantially related to any such alleged objective. Nor have Defendants any persuasive justification for preferring males over females in admission to UGA.

94.

Accordingly, Defendants’ violations of Plaintiffs’ right to equal treatment under the law violates the Fourteenth Amendment to the Constitution and creates liability under 42 U.S.C. §§1983 and 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that they be afforded the following relief:

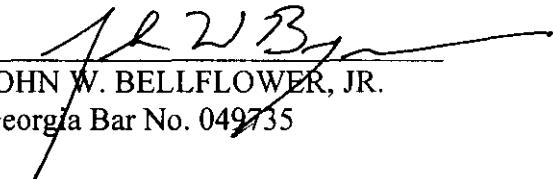
- a. That this Court temporarily and preliminarily enjoin the Defendants herein from continuing to use race and/or gender as a criteria for student admission or award of scholarships until such time as the substantive issues in this lawsuit are decided;
- b. That this Court permanently enjoin Defendants herein from using race and/or gender as a criterion for student admission or award of scholarships at the University of Georgia;

- c. That the actions of the Defendants complained of herein are declared to be unconstitutional and void;
- d. That the named Plaintiffs receive general damages pursuant to 42 U.S.C. §1983, 42 U.S.C. § 2000d-7 and 20 U.S.C. § 1681 et seq. in an amount to be determined by a jury to compensate Plaintiffs for all compensable damages suffered as a consequence of Defendants' actions;
- e. That the Court enter an award sufficient to compensate Plaintiffs for all expenses of litigation incurred in this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. §§ 1988 and 2000d, et seq.;
- f. That the Court order the admission of the named Plaintiffs to the University of Georgia;
- g. That the Court grant Plaintiffs such additional and further relief as the Court deems just and proper.

Respectfully submitted,



A. LEE PARKS
Georgia Bar No. 563750



JOHN W. BELLFLOWER, JR.
Georgia Bar No. 049735

PARKS, CHESIN & MILLER, P.C.
75 Fourteenth Street
Suite 2600
Atlanta, GA 30309
404/873-8000